

**CITY OF CHANDLER PURCHASE ORDER TERMS AND CONDITIONS (revised 9/03)**

1. **Acceptance–Agreement.** Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face and on the back hereof. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected, but this purchase order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.

2. **Quality, Quantity, Deliveries, and Packing.** In the event no quality is specified on the face hereof, the goods delivered and/or services rendered hereunder must be of the best quality. The quantity of goods indicated on the face hereof must not be exceeded without written approval of Purchaser. Seller shall ship and deliver goods and render services hereunder on the date or dates specified on the face hereof, unless prior written approval of any change in such date or dates is given by Purchaser. No charge will be paid by Purchaser for packing, boxing, or cartage, unless specified on the face hereof. Loss of or damage to any goods not packed in such a manner as to insure proper protection to same shall be borne by Seller. Each package of goods shipped must contain a memorandum showing shipper's name, contents of package, and the purchase order number on the face hereof.

3. **Inspection / Testing.** If the goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected, in whole or in part by Purchaser by reason of Seller's failure to comply with any of the terms, conditions and/or specifications contained herein, Purchaser, after so notifying Seller in writing, may: either return the rejected portion of such goods and/or the rejected portion of such services to Seller at Seller's expense or hold the same for such disposal as Seller shall indicate, without invalidation the remainder of this purchase order; or Purchaser may reject the entire services and cancel this purchase order for any undelivered balances of goods and/or services.

If goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected, as hereinabove provided, Purchaser may purchase like goods elsewhere and/or obtain like services elsewhere and charge Seller with any loss or damage (either direct or indirect) sustained by Purchaser (including, but not by way of limitation, any difference between the price paid by Purchaser for such like goods and/or services and the price specified in the face hereof) plus all costs of collecting the same (including, but not by way of limitation, attorneys' fees and court costs). Purchaser shall not be obligated to pay for any goods shipped and/or services rendered which are rejected by it.

4. **Invoices.** A separate invoice shall be issued for each shipment. No invoice shall be issued prior to shipment of goods and no payment will be made prior to receipt of goods and correct invoice. Payment due dates, including discount periods, will be computed from date of receipt of goods or date of receipt of correct invoice (whichever is later) to date Buyer's warrant is mailed. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. The Buyer's obligation is payable solely from funds appropriated for the purpose of acquiring the goods or services referred to in this Purchase Order.

5. **Patents.** Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, and Seller further agrees to indemnify Purchaser and its agents against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement or decree of judgment therein. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller.

6. **Indemnification.** The Contractor agrees to indemnify, defend, and save harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively; from all losses, claims, suits, actions, payments and judgments, demands, expenses,

attorney's fees, defense costs, or actions of any kind and nature resulting from personal injury to any person, including employees of the Contractor or of any sub-contractor employed by the Contractor (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the Contractor for the work to be performed hereunder, except any such injury or damages rising out of the sole negligence of the City, its officers, agents, or employees. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

7. **Equal Employment Opportunity.** Seller hereby agrees to comply with the provisions set forth in Federal Executive Order 11246 and all similar orders, rules, registrations and laws prohibiting discrimination in employment, and further agrees that it will not discriminate on the basis of Race, Creed, Color, Sex, National Origin, or Age.

8. **Incorporation by Reference.** In the event of conflict, the Terms and Conditions in any RFQ, IFB, RFP, or any executed contract document shall supercede Purchase Order language.

9. **Remedies and Applicable Law.** This Purchase Order shall be governed by, and Buyer and Seller shall have all remedies afforded each by law, except as otherwise provided in this Purchase Order. This Purchase Order shall be governed by the law of the State of Arizona, and suits pertaining to this Purchase Order may be brought only in the courts of the State of Arizona.

10. **Warranties.** Seller warrants that all goods delivered under this Purchase Order will conform to the requirements of this Purchase Order (including all applicable descriptions, specifications, drawings, and samples), will be free from defects in material and workmanship and will be free from defects in design and fit for the intended purposes. Any inspection or acceptance of the goods by Buyer shall not alter or affect the obligations of Seller or the right of Buyer under the foregoing warranties.

11. **Performance.** In the event that Seller's obligations hereunder require or contemplate performance of services by a third party, or persons under contract to Seller, to be done on Purchaser's property, or property of Purchaser's customers, the Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Purchaser.

12. **Insurance.** Seller shall maintain all necessary insurance coverage's, including public liability and Worker's Compensation insurance.

13. **Termination for Convenience.** Purchaser reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Seller shall not unreasonably anticipate the requirements of this order.

14. **Termination for Cause.** Purchaser may also terminate this order or any part hereof for cause in the event of any default by the seller, or if the seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Purchaser, upon request, with adequate assurances of future performance shall all be causes allowing Purchaser to terminate this order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination. If it should be determined that Purchaser has improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

15. **Assignment – Delegation.** No right or interest in this Purchase Order shall be assigned by Seller without the written permission of Buyer, and no delegation of any duty of Seller shall be made without permission of Buyer.